

South Carolina Statute on Confidentiality as it Pertains to Social Workers

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Act No. 163(R249,H3599)

Introduced by Judiciary Committee; AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 19-11-95 SO AS TO PROVIDE THAT CONFIDENCES OF A PATIENT IN THE COURSE OF DIAGNOSIS OR TREATMENT OF A MENTAL OR EMOTIONAL CONDITION MAY NOT BE REVEALED BY PROVIDERS, AS DEFINED BY THIS ACT, SUBJECT TO EXCEPTIONS, TO PROVIDE IF DISCLOSURE IS MADE BY AUTHORITY OF SOME OF THE EXCEPTIONS, THE SAME DEGREE OF CONFIDENTIALITY APPLIES TO THE RECIPIENTS OF THE DISCLOSURE AS APPLIES TO THE PROVIDER, AND TO ALLOW A CAUSE OF ACTION FOR VIOLATION OF THE SECTION.

Be it enacted by the General Assembly of the State of South Carolina:

Confidences of patients of mental illness or emotional conditions

SECTION 1. The 1976 Code is amended by adding:

"Section 19-11-95.

(A) For purposes of this section:

(1) 'Provider' means a person licensed under the provisions of any of the following and who enters into a relationship with a patient to provide diagnosis, counseling, or treatment of a mental illness or emotional condition:

(a) Chapter 55 of Title 40;

(b) Chapter 75 of Title 40;

(c) Section 40-63-70 as a licensed master social worker or a licensed independent social worker;

(d) Section 40-33-10 as a registered nurse who meets the requirements of a clinical nurse specialist and who works in the field of mental health.

(2) 'Patient' means a person who consults or is interviewed by a provider to diagnose, counsel, or treat a mental illness or emotional condition as authorized in item (A)(1) of this section.

(3) 'Confidence' is a private communication between a patient and a provider or information given to a provider in the patient-provider relationship.

(4) 'Written authorization after disclosure,' or a similar phrase, includes an authorization in the application or claims procedure of an insurer or a person providing a plan of benefits.

(5) 'Mental illness or emotional condition' is defined consistent with accepted diagnostic practices.

(B) Except when permitted or required by statutory or other law, a provider knowingly may not:

(1) reveal a confidence of his patient;

(2) use a confidence of his patient to the disadvantage of the patient;

(3) use a confidence of his patient for the advantage of himself or of a third person, unless the patient gives written authorization after disclosure to him of what confidence is to be used and how it is to be used.

(C) A provider may reveal:

(1) confidences with the written authorization of the patient or patients affected, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed;

(2) confidences when allowed by statute or other law;

(3) the intention of the patient to commit a crime or harm himself and the information necessary to prevent the crime or harm;

(4) confidences reasonably necessary to establish or collect his fee or to defend himself or his employees against an accusation of wrongful conduct; (5) in the course of diagnosis, counseling, or treatment, confidences necessary to promote care within the generally recognized and accepted standards, practices, and procedures of the provider's profession;

(6) confidences in proceedings conducted in accord with Sections 40-71-10 and 40-71-20;

(7) confidences with the written authorization of the patient or patients affected for processing their health insurance claims, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed.

(D) A provider shall reveal:

(1) confidences when required by statutory law or by court order for good cause shown to the extent that the patient's care and treatment or the nature and extent of his mental illness or emotional condition are reasonably at issue in a proceeding; provided, however, confidences revealed shall not be used as evidence of grounds for divorce;

(2) confidences pursuant to a lawfully issued subpoena by a duly constituted professional licensing or disciplinary board or panel;

(3) confidences when an investigation, trial, hearing, or other proceeding by a professional licensing or disciplinary board or panel involves the question of granting a professional license or the possible revocation, suspension, or other limitation of a professional license.

(E) A disclosure pursuant to subsection (C) or (D) is limited to the information and the recipients necessary to accomplish the purpose of the subsection permitting the disclosure.

(F) A person to whom a disclosure is made pursuant to subsections (C) (1), (5) and (7), an employee to whom a disclosure is made pursuant to subsection (G), and any other person to whom a confidence, written or oral, is disclosed by a provider are bound by the same duty of confidentiality as the provider from whom he received the information.

(G) A provider shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences of a patient, except that a provider may reveal the information allowed by subsections (C) and (D) through an employee.

(H) A provider releasing a confidence under the written authorization of the patient or under the provisions of this section is not liable to the patient or other person for release of the confidence to the person authorized to receive it; provided, however, a patient has a cause of action for damages against a provider, associate, agent, employee, or any other person who intentionally, willfully, or with gross negligence violates the provisions of this section.

(I) Nothing in this section alters the existing requirements of non providers to preserve confidences or the requirements of providers subject to Sections 44-23-1090 and 44-52-190. Time effective SECTION 2. This act takes effect six months after approval by the Governor. Approved the 8th day of June 1989.